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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/321,386      05/27/99      BENSON      G      MEDIDNA.1C1C

020995      LM01/0614  
KNOBBE MARTENS OLSON & BEAR LLP  
620 NEWPORT CENTER DRIVE  
SIXTEENTH FLOOR  
NEWPORT BEACH CA 92660

EXAMINER

VON BUHR, M

ART UNIT

PAPER NUMBER

2771

DATE MAILED:

06/14/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.

09/321,386

Applicant(s)

BENSON et al.

Examiner

MN VON BUHR

Group Art Unit

2771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period of Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE — 3 — MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- ☒ Responsive to communication(s) filed on 2/23/00.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- ☒ Claim(s) 1-53 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-53 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

1. Examiner acknowledges receipt of Applicant's response to the previous Office action, received February 23, 2000; which presents arguments and submits a terminal disclaimer. Claims 1-53 remain pending in this application.

2. The terminal disclaimer does not comply with 37 CFR § 1.321(b) and/or (c) because:

The person who has signed the disclaimer has not stated the extent of his/her interest, or the business entity's interest, in the application/patent. See 37 CFR § 1.321(b)(3).

3. Since the terminal disclaimer as filed is insufficient, as noted above, the rejections of instant claims 1-53 under the judicially created doctrine of double patenting over claims 1-29 of U.S. Patent No. 5,845,281, and provisionally over claims 1-69 of co-pending Application Serial No. 09/164,606 are maintained.

4. In response to Applicant's remarks, concerning the correction of inventorship in U.S. Patent No. 5,845,281 and Application Serial No. 09/164,606, the possibility of a 35 U.S.C. § 102(f) and/or (g) rejection of the instant claims, in relation to each of these documents, is deemed to have been overcome and is, therefore, withdrawn.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR § 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR § 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any response to this FINAL Office action should be mailed to:

**Box AF**  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

(703) 308-9051, (for formal communications; mark "EXPEDITED PROCEDURE");

**Or:**

(703) 308-5403, (for informal/draft communications; label "PROPOSED" or "DRAFT").

Hand-delivered papers should be brought to Crystal Park II, 2121 Crystal Dr., Arlington, VA, 6th Floor (Receptionist).

7. Any inquiry concerning this communication or earlier communications from Examiner should be directed to Maria N. Von Buhr whose telephone number is (703) 305-3837. Examiner can normally be reached on Monday-Thursday between 8:00 A.M. and 4:00 P.M.

If attempts to reach Examiner by telephone are unsuccessful, Examiner's Supervisor, Thomas G. Black can be reached at (703) 305-9707.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.



**MARIA N. VON BUHR**  
**PRIMARY PATENT EXAMINER**  
**ART UNIT 2771**

MNVB  
6/9/00